

## REMARKS/ARGUMENT

### Amendments to the Claims

Claim 17 has been amended and limited to a mineral oil-free emollient of an ethyl hexyl cocoate and a poly- $\alpha$ -olefin, as supported on page 2, line 18 of the Specification, and, otherwise, Claims 17, 21-25, 30, 31 and 33-35 have been amended with minor grammatical, usage, consistency-with-earlier-amendments and stylistic changes, without materially changing, other than limiting, the overall claimed invention or adding any new matter to the Claims. Entry of these amendments and continued examination of the Application based on the same is respectfully requested.

The instant invention is directed to a mineral oil-free emollient mixture, particularly as a mineral oil substitute, comprising 10-to-90, preferably 20-to-80, more preferably 25-to-75%, by weight, based on the total weight of the ethyl hexyl cocoate and poly- $\alpha$ -olefin, of ethyl hexyl cocoate, and 90-to-10, preferably 80-to-20, more preferably 75-to-25%, by weight, of a poly- $\alpha$ -olefin, preferably a hydrogenated poly- $\alpha$ -olefin and/or an oligomer, particularly one or more members selected from the group consisting of a dimer of 1-decene and a dimer of 1-dodecene, and/or preferably having a kinetic viscosity at 100°C of 1-to-100, more preferably 15-to-40 cSt, preferably consisting of ethyl hexyl cocoate and a poly- $\alpha$ -olefin or comprising up to 50, particularly 0.1-to-50, more particularly 5-to-40, most particularly 10-to-30%, by weight, based on the weight of the ethyl hexyl cocoate and poly- $\alpha$ -olefin, of an additional emollient, and a cosmetic composition comprising such emollient mixtures.

Claims 17, 21-25, 30, 31 and 33-35 are currently pending in this Application.

Claim 32 has been rejected under 35USC112, second paragraph, as indefinite due to the use of "The" to begin the Claim, without antecedent basis for this limitation.

Cancellation of this Claim is believed to overcome and remove this rejection, which Applicants respectfully request be withdrawn.

Claims 17, 22-25, 31 and 33 have been rejected under 35UCS102(b) as anticipated by Culpon, Jr. (US5,156,759).

United States Patent 5,156,759 (Culpon, Jr.) describes synthetic lubricating oil compositions, inherently free of sulfur, phosphorous and metal additives, and resistant to oxidation and corrosion, allegedly with good lubricity at high temperatures and otherwise adequate thermal stability, comparable to mineral oil formulations, as replacements for mineral oil formulations, particularly for protecting, e.g., rotating bearings and/or sliding screws, pistons, crankcase components and other parts in gas compressors, such as used in the manufacture of ethylene oxide and propylene oxide, comprising a major portion of polyalphaolefin oils (prepared by the oligomerization of 1-decene or other lower olefin to produce high viscosity index lubrication range hydrocarbons in the C<sub>20</sub>-to-C<sub>60</sub> range or other lower olefin polymers), preferably at least 5, more preferably 5-to-20 weight % of an ester (diester or polyolester oils, possibly comprising an aliphatic diester of an aliphatic dicarboxylic acid, or those made from C<sub>5</sub>-C<sub>12</sub>-monocarboxylic acids and polyols and polyol esters) synthetic lubricating oil additive-solubilizer, and/or polyalkyleneglycol oils (prepared by polymerization of alkylene oxide polymers and interpolymers and derivatives, wherein the terminal hydroxyl groups have been modified by esterification, etherification, etc.), or mixtures having a kinematic viscosity of 2-to-10, preferably 4-to-10 cSt at 100°C, 0.1-to-3, preferably 1-to-2 weight %, in the aggregate, of preferably phenolic and/or amino antioxidants or mixtures thereof, and 0.01-to-0.5, preferably 0.1-to-0.2 weight %, in the aggregate, of triazole and/or alkenyl succinic acid ester rust inhibitors/metal passivators and, optionally, anti-wear additives.

While the reference does disclose substitutes for mineral oil formulations (although as lubricating oils, rather than emollients), and includes, *inter alia*, poly- $\alpha$ -olefin oils, ester oils and mixtures thereof, the esters, useful as lubrication oils, that it describes as made from C<sub>5</sub>-C<sub>12</sub>-monocarboxylic acids are prepared with polyols, rather than monoalcohols, and, therefore, it neither teaches nor even remotely suggests the specific combination of ethyl hexyl cocoate and poly- $\alpha$ -olefin in the emollient mixture of Applicants' invention. It does include some elements

of some of Applicants' Claims, but it neither discloses nor suggests essential elements of such Claims, as necessary to satisfy the criteria for a §102 rejection.

Reconsideration and withdrawal of this rejection is thus respectfully requested.

Claims 17-20, 22, 24, 26, 27, 29-33, 35, 36, and 37 have been rejected under 35USC102(b) as anticipated by Gordon (US4,534,963).

United States Patent 4,534,963 (Gordon) describes a pressed-powder cosmetic eye shadow composition intended to provide an iridescent effect to the eyelid area and having good skin application, adhesion and wearability properties and satisfactory compactability (including at high pressing speeds into variously-shaped and -sized receptacles), able to survive standard industry drop tests and shipping tests, comprising from about 40-80, preferably 45-70%, by weight, of easily-compacted nacreous or pearlescent material, such as natural pearl, mica, bismuth oxychloride, bismuth oxychloride on mica, titanated mica, and titanated mica and iron oxide, and a two-part binder system, which imparts an enhanced luster itself and facilitates the production of a homogeneous mixture of even difficult components, such as 80% pearlizing pigments, without glazing or cake formation, quickly and efficiently, comprising from about 0.1-to-15, preferably 0.5-to-9.0%, by weight, of a dry binder ingredient selected from the group consisting of cosmetically-suitable (i.e., pure, safe, non-toxic and non-irritating) micronized polyethylene wax with a molecular weight of from about 600-to-4000, preferably from about 700-to-800, more preferably 750, and a particle size from about 2-to-35, preferably an average of 25 $\mu$ , and a liquid binder mixture of suitable moisturizers, emollients and lubricants comprising about 0.25-to-5.5, preferably 0.75-to-3.5%, by weight, of petrolatum (to aid in binding the powdered ingredients, provide moisturization, improve the wear in powder eye shadows and impart a water-resistant property); about 1.0-to-15, preferably 2.0-to-4.5%, by weight, of a cosmetically-suitable tetraester of pentaerythritol and a cosmetically-suitable acid, such as lauric, oleic, stearic, palmitic, linoleic, isostearic, hydroxystearic, acetic and a branched-chain nonanoic acid, preferably the tetraester of pentaerythritol and oleic acid; and 0.1-to-3.0, preferably 0.5-to-2.0%, by weight, of a cosmetically-suitable polyolefin (synthetic wax), such as hexene-1,

heptene-1, octene-1, decene-1, undecene-1, dodecene-1, and tetradecene-1, preferably dodecene-1, formed by polymerizing an alpha olefin, which functions as a lubricant and aids in binding the powder ingredients, and serves as an inorganic pigment wetting agent and enhances color, intensity and wearability of the compositions; as well as other optional conventional powdered eye shadow ingredients, such as up to 40%, by weight, of the transparent forms of talc (as a filler); metal soaps, such as zinc, lithium, magnesium and calcium stearates, preferably up to about 6.0% zinc stearate, for good skin adhesion and lubricity; colorants, such as iron oxide pigments, as well as natural pigments, fragrances and preservatives; up to 15, preferably 1.5-to-5.5%, by weight, of fatty esters, such as octyl palmitate, isopropyl palmitate, isostearyl neopentanoate, isopropyl lanolate, and isopropyl myristate, primarily as wetting agent for the pearlescent pigment, as well as for improving the high pearlescent cake appearance, product application and powder pressability; and, optionally, up to 7, preferably 0.4-to-about 5.5%, by weight, of a triester or mixture of triesters of glycerin, preferably trilaurin, as an emollient and to improve the wear and impart water-resistance to the compositions, a cosmetically-suitable acid, selected from lauric, stearic, oleic, palmitic, linoleic, isostearic, hydroxystearic, acetic and branched-chain nonanoic acids; and possibly other optional ingredients, such as antioxidants and water.

The Gordon Patent does describe cosmetic compositions, but, again, fails to teach or remotely suggest the specific emollient mixture of the instant invention. The reference describes the use of tetraesters with a small amount of polyolefin in the liquid phase of its binder system, and does suggest that the liquid phase may, optionally, also include triesters of glycerin with various acids, but it never discloses or comes at all close to even suggesting, for its binders or for any other purpose, esters of monoalcohols, such as the ethyl hexyl cocoate of Applicants' invention.

Reconsideration and withdrawal of this rejection is thus respectfully requested

Claims 23 and 34 have been rejected under 35USC103(a) as unpatentable over Gordon.

As the viscosities cited rely on a poly- $\alpha$ -olefin in Applicants' emollient mixtures neither taught nor remotely suggested by the Patent, as discussed above, Applicants respectfully request that this rejection be reconsidered and withdrawn.

Claims 21 and 28 have been rejected under 35USC103(a) as unpatentable over Gordon in view of Biatry *et al* (US2003/0125378).

Published United States Patent Application 2003/0125378A1 (Biatry *et al*) describes a more-or-less fluid, preferably cosmetic and/or dermatological composition for improving the stability (slowing or stopping decomposition at 45°C for two months) and retaining the activity of 0.1, 1, 5, or 25g per 100g of an oxidation-sensitive hydrophilic active principle of natural or synthetic origin, such as ascorbic acid or one of its derivatives (e.g., salts and esters thereof), without causing discomfort or skin irritation, in the form of a water-in-oil or oil-in-water emulsion or multiple emulsions, comprising 5-to-80, preferably 5-to-50%, by weight, of the oily phase, and 0.3-to-30, preferably 0.5-to-20%, by weight in the aggregate, of at least one emulsifier selected from the group consisting of amphoteric, anionic, cationic or nonionic (such as esters of fatty acids) emulsifier(s), used alone or as a mixture, and, optionally, a coemulsifier, an aqueous or aqueous/alcoholic solution, aqueous gel or dispersion of a fatty phase in an aqueous phase using spherules, a white or colored cream, an ointment, a milk, a lotion, a serum, a paste, a foam, an aerosol or a solid (stick), comprising, in addition to the oxidation-sensitive hydrophilic active principle, at least one non-crosslinked N-vinylimidazole polymer or between 0.1-to-5, preferably between 0.1-to-2%, by weight, with respect to the total weight of the aqueous phase, of a non-crosslinked N-vinylimidazole copolymer (combining N-vinylimidazole with N-vinylpyrrolidone and/or N-vinylcaprolactam, preferably N-vinylimidazole with N-vinylpyrrolidone, with a molar fraction of N-vinylimidazole units of between 0.1 and 1, preferably between 0.4 and 0.9, inclusive), in a molar ratio of N-vinylimidazole-to-the active principle of between 0.004 and 16, preferably between 0.01 and 1, inclusive, with active principle and polymer or copolymer being in the aqueous phase of a physiologically-acceptable medium comprising, in addition to an aqueous phase, optionally an oily phase, comprising one or more oils, selected from, e.g., hydrocarbonaceous oils of animal or vegetable origin, synthetic esters and ethers, linear or

branched hydrocarbons of mineral or synthetic origin, C<sub>8</sub>-C<sub>26</sub>-fatty alcohols, partially-hydrocarbon-comprising and/or silicone-comprising fluorinated oils, silicone oils, and their mixtures, and optionally, C<sub>8</sub>-C<sub>30</sub>-fatty acids, waxes, silicone resins and silicone elastomers, or a physiologically-acceptable organic solvent chosen, e.g., from C<sub>1</sub>-C<sub>8</sub>-, preferably C<sub>1</sub>-C<sub>6</sub>-lower alcohols, such as ethanol, isopropanol, propanol or butanol, polyethylene glycols having 6-to-80 ethylene oxide units, or polyols, such as propylene glycol, isoprene glycol, butylene glycol glycerol or sorbitol, possibly including 0.01-to-20%, of the total weight of the composition, of adjuvants, such as hydrophilic or lipophilic gelling agents, preservatives, solvents, 0-to-20, preferably 1-to-10%, by weight, of fillers, fragrances, UV screening agents, bactericides, odor absorbers, coloring materials, plant extracts or salts, then, also, 0.1-to-20, preferably 0.2-to-15%, by weight in the aggregate, of at least one organic photoprotective agent and/or at least one inorganic photoprotective agent that is active in the UV-A and/or UV-B regions, possibly at least one other active principle that stimulates dermal macromolecules, or which prevents their decomposition and/or one agent that stimulates the proliferation of fibroblasts or keratinocytes and/or the differentiation of keratinocytes, as well as the use of such topical compositions, in particular, to prevent and/or treat cutaneous signs of intrinsic ageing due to modifications caused by endogenous factors.

While the Biatry *et al* published Patent Application does include hydrogenated polyisobutene among hydrocarbons that may be used in the oily phase of its cosmetic compositions, this reference clearly neither teaches nor remotely suggests the novel emollient mixture of the instant invention, and fails to cure the deficiencies of the Gordon Patent, with respect to Claim 21 or any other part of the present Application. Showing an hydrogenated polyolefin for use in the Biatry *et al* compositions does not overcome the Gordon Patent's failure to disclose or suggest Applicants' mineral oil-free emollient mixture comprising ethyl hexyl cocoate and poly- $\alpha$ -olefin.

Reconsideration and withdrawal of this rejection is, therefore, respectfully solicited.

Appl. No.: 10/549,953

Amendment dated June 30, 2008

Applicant's Response to the Office Action mailed December 31, 2007

Believing that the Application is in condition for allowance, Applicants earnestly solicit such favorable action of the Examiner, and respectfully request that a timely Notice of Allowance be issued in the prosecution of this Application.

However, if any further questions do remain which may be resolved by a telephone interview, the Examiner is respectfully requested to telephone another of Applicants' Attorneys, John F. Daniels, at 215-628-1413 through July 31, 2008, and Synnestvedt & Lechner LLP at 215-923-4466 thereafter.

Respectfully submitted,

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